

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JULIO MAYEN, an individual, on his own behalf and on behalf of others similarly situated,

Plaintiff,

V.

W.M. BOLTHOUSE FARMS, INC., et al.,

Defendants.

Case No. 1:21-cv-00318-DAD-BAK

ORDER FOR PLAINTIFF TO SHOW CAUSE WHY THE CASE AGAINST BOLT HOUSE FARMS, BOLTHOUSE FARMS CUYAMA CUYAMA, AND BOLTHOUSE FARMS KERN COUNTY SHOULD NOT BE DISMISSED FOR FAILURE TO COMPLETE SERVICE PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 4(m)

Plaintiff Julio Mayen proceeds through counsel in this civil action against Defendants W.M. Bolthouse Farms, Inc.; MA Medina Farm Labor Services, Inc.; Bolt House Farms; Bolthouse Farms Cuyama Cuyama; Bolthouse Farms Kern County; and various Doe Defendants. (ECF No. 1). For the reasons given below, the Court orders Plaintiff to show cause why the case against Defendants Bolt House Farms, Bolthouse Farms Cuyama Cuyama, and Bolthouse Farms Kern County¹ should not be dismissed without prejudice for failure to complete service pursuant to Federal Rule of Civil Procedure 4(m).

Under Federal Rule of Civil Procedure 4(m), “[i]f a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a

¹ The Court will not require Plaintiffs to address the identity of the remaining Doe Defendants and service on them at this time but may do so in a later order, or Plaintiffs may voluntarily address the issue in their response to the order to show cause.

1 specified time.” Fed. R. Civ. P. 4(m). However, “if the plaintiff shows good cause for the failure,
2 the court must extend the time for service for an appropriate period.” *Id.*

3 According to the notice of removal filed on March 1, 2021, and supported by the attached
4 documents, Plaintiff initiated this action in state court with the filing of the complaint on October
5 28, 2020, against Defendant MA Medina Farm Labor Services and Does 1 through 100. (ECF
6 No. 1, pp. 2, 12). Plaintiff amended the complaint on January 25, 2021, to add Defendants W.M.
7 Bolthouse Farms, Inc.; Bolt House Farms; Bolthouse Farms Cuyama Cuyama; and Bolthouse
8 Farms Kern County in place of Does 1 through 4. (*Id.* at 2, 8-11). The notice of removal
9 represents that service was achieved on Defendants W.M. Bolthouse Farms, Inc. and MA Medina
10 Farm Labor Services in state court.² (*Id.* at 2-3). However, the available state court record does
11 not indicate that Defendants Bolt House Farms, Bolthouse Farms Cuyama Cuyama, and
12 Bolthouse Farms Kern County were served in state court, and the Court’s docket reveals no proof
13 that these Defendants were served after removal. *See Whidbee v. Pierce Cnty.*, 857 F.3d 1019,
14 1023 (9th Cir. 2017) (noting that Rule 4(m) governs service once a case is removed to federal
15 court); *Nealey v. Transportacion Maritima Mexicana, S. A.*, 662 F.2d 1275, 1282 (9th Cir. 1980)
16 (“If process was properly issued and timely served under state law prior to removal, such service
17 remains sufficient afterwards.”). Accordingly, the ninety-day time period for service under Rule
4(m) appears to have expired without service being achieved.

18 Accordingly, IT IS ORDERED as follows:

19 1. Plaintiff shall show cause why the case against Defendants Bolt House Farms, Bolthouse
20 Farms Cuyama Cuyama, and Bolthouse Farms Kern County should not be dismissed
21 without prejudice for failure to complete service pursuant to Federal Rule of Civil
22 Procedure 4(m);
23 2. Plaintiff shall file, no later than August 16, 2022, proof of service as to these Defendants
24 or a response to this order to show cause demonstrating that Plaintiff has good cause for
25 failing to complete service on these Defendants and explaining when Plaintiff will
26 complete service; and

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² Defendant W.M. Bolthouse Farms, Inc. has a pending motion to dismiss. (ECF No. 8).

3. Plaintiff is cautioned that failure to respond to this order to show cause may result in the dismissal of these Defendants from the action.

IT IS SO ORDERED.

Dated: August 2, 2022

/s/ *Eric P. Groj*
UNITED STATES MAGISTRATE JUDGE